Report of Legal Issues
Subcommittee
- Taxes and fees
  - Sinclair Paint decision and implications
- Institutional vehicles for dispensing revenues
- Role of this sub-committee
  - Use of auction, allocation revenues (legal constraints)
Fees can be approved with a majority vote of the legislature.

New or increased taxes require a two-thirds vote of the legislature or voters per Proposition 13 (1978), Proposition 62 (1986), and Proposition 216 (1996).

Issue has been and continues to be the subject of extensive litigation.

Taxes
- Imposed for revenue purposes, rather than a specific benefit or purpose.

Fees
- Charges that recover the cost of providing a service or pay for the cost of regulating specific activities or industries.
- Require that a “nexus” exist between fee and service/activity.

Finally, auction revenues or broad-based fees may be considered general fund revenues and subject to general fund restrictions.
Sinclair Paint vs. State Board of Equalization

- Challenged the imposition of a fee which provided a dedicated funding source for lead poisoning prevention and treatment
- California Supreme Court upheld the constitutionality for manufacturers of lead-containing gasoline and paint products

Court decision ratified the use of fees approved by a majority of the Legislature to address health or other social problems created by the use or production of a particular product.

Court concluded that:
- Fee must not exceed the cost of providing services related to the remediation of the problem created by a particular product
- Fee must “bear a reasonable relationship to those adverse effects”
- A reasonable connection, or nexus, must exist between the social problems remedied by a fee and the payer of the fee

Similar case, California Farm Bureau, et al. vs. State Water Resources Control Board, now pending

LADWP has argued specifically to the CPUC that auctioning allowances constitutes a tax
**SB 31 (Pavley, 2009)**

- ARB may adopt by regulation a schedule of fees to be paid by the sources of greenhouse gas emissions.
- Revenues collected pursuant to this section, or including any revenues generated pursuant to compliance mechanisms adopted by the state board, shall be deposited into the Air Pollution Control Fund.
- Revenues [should be] available, upon appropriation by the Legislature, for purposes of carrying out this division, including, but not limited to, all of the following:
  - The costs of administering this division.
  - Renewable energy and energy efficiency programs that reduce greenhouse gas emissions, particularly those programs focusing on low-income consumers.
  - Investments in technologies to reduce greenhouse gas emissions, including research, development, and demonstration and deployment, especially technologies that provide pollution reduction cobenefits.
  - Green jobs development and training that will reduce greenhouse gas emissions.
- Other mechanisms, such as a California Carbon Trust, suggested by ETAAC.
• Reactive (not exclusively) to requests from other subcommittees

• Clarification with Allowance Value Subcommittee on use of auction, allocation revenues (legal constraints)